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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,168	07/31/2001	Marshall R. Moore	1287.02	9029
21901	7590	11/02/2005	EXAMINER	
SMITH & HOPEN PA 15950 BAY VISTA DRIVE SUITE 220 CLEARWATER, FL 33760			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/682,168	Applicant(s) MOORE, MARSHALL R.	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The use of the trademarks KEVLAR and MYLAR has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The amendment filed April 15, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: an aramid polymer fiber and a polyethylene terephthalate polymer film material.

Applicant is required to cancel the new matter in the reply to this Office Action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure doesn't support the impermeable primary tank and the impermeable secondary tank. Although these tanks may be made from an impermeable material, it is quite another limitation to describe the tank as impermeable since pipes, tubes or fluid transfer lines are clearly shown in Fig. 1, 2, 4 and 5 and there is no

Art Unit: 3727

description or disclosure of an impermeable tank or impermeable material at any portion of the written disclosure as originally filed. **This is a new matter rejection.**

Claims 4, 5 and 16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure doesn't support the polyethylene terephthalate (PET) polymer film material which is now being used to represent Mylar. The previous reference had been to high-temperature polyester film material. The original disclosure doesn't support the aramid polymer fiber material which is now being used to represent Kevlar. The previous reference had been to high-temperature polyester film material. **This is a new matter rejection.**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanai et al. (Sanai).

Sanai discloses a luggage container which has structure to store flammable and combustible liquids and has secondary containment and which is inherently capable of performing as an aboveground storage tank, the container as shown in Fig. 4a comprises an inner primary tank (432)(metal), an outer secondary tank (426)(metal), an insulating foam (430) and a polymer material (428)(from a polymeric or plastic material, or from a composite such as carbon

Art Unit: 3727

fiber of fiberglass) which has inherent fire resistant characteristics, the polymer material sandwiches between the foam material (430) and the outer secondary tank. The container may be used as a tank to provide fuel to a generator. The container provides a support means to form a base for a generator.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarvey in view of Sanai and Silverman et al. (Silverman).

McGarvey discloses an above ground storage tank for flammable liquids having a secondary containment capability, the tank comprising an inner primary tank for storing liquid, an outer secondary tank encasing the primary tank and defining an interstitial space therebetween, an insulating foam material disposed in the interstitial space and a fire resistant material sandwiched between the foam material and the inner primary tank. McGarvey discloses the invention except for the fire resistant material is not a polymer and is not sandwiched between the foam material and the outer secondary tank. It would have been obvious to modify the position of the fire resistant material to be relocated in the interstitial space between the foam material and the outer secondary tank if it was more important to protect the inner surface of the outer secondary tank from fire and a resulting explosion as would be necessary if fuel had leaked from the inner tank into the interstitial space. Furthermore, Sanai teaches a container with a wall structure having a fire resistant composite which fits within an interstitial area comprised of an

Art Unit: 3727

inner foam (430) and an outer fire resistant polymer material. Silverman teaches a fire resistant polymer composite having two layers of foam which sandwich a fire resistant polymer film. It would have been obvious to either replace or reconfigure the composite which lies within the interstitial space to have an inner layer of foam and an outer fire resistant polymer layer in order to optimize the fire resistance of the polymer material as well as the material consistency and thermal efficiency of the foam.

The specific teachings of foam materials include foamed concrete, VERMICULITE, STYROFOAM, urethane foam, pumice and FENDOLITE. It would have been obvious to modify the foam material to be polymethyl or rubber since these are equivalent and it is a matter of design choice as to which material is best. It would have been obvious to use MYLAR, polyethylene terephthalate (PET) or polyester film or KEVLAR, aramid polymer fiber, or polyester film as the fire resistant material since these polymer materials are equivalent to the polymer materials of Sanai and Silverman.

The leak sensor, first venting means, and second venting means are provided by the fittings at the top of the tank. The tank is inherently capable of use with a generator. The top of the tank provides a support means forming a base for a generator.

Applicant's arguments filed September 24, 2004 have been fully considered but they are not persuasive. Applicant's remarks concerning the new matter objection, 112, first paragraph rejection (new matter rejection) are not convincing. Applicant seems to have clearly set forth in paragraph 18 of the specification that both Kevlar and Mylar are "high-temperature polyester film materials", this is a definition of these two terms. To change the meaning of Kevlar and Mylar to another meaning consistent with some dictionary or any other meaning after already

Art Unit: 3727


establishing the initially defined meaning has the appearance of adding new subject matter. This can't be ignored.

Re the art rejections, applicant argues that the material of the inner and outer tanks are impermeable. Applicant misstates the claim limitation. It is the tank that is limited to be impermeable in claims 1 and 16 not the material of the tanks. Even if the tank material were to be limited to be impermeable, it is believed that the disclosure doesn't support such limitation. The arguments made in opposition to the art rejections are not convincing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on Tu-F 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc